IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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REO L. COVINGTON,

Plaintiff,

v.

SERGEANT STEINERT, MARIE SVEC, PAUL LUDVIGSON, WILLIAM J. POLLARD, N. KAMPHUIS and N. PEMBROSE,

Defendants.

OPINION AND ORDER

13-cv-379-wmc

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Plaintiff Reo Covington filed a proposed complaint pursuant to 42 U.S.C. § 1983, alleging interference with his mail and retaliation by prison personnel. On February 25, 2014, the court denied Covington's request for leave to proceed *in forma pauperis* and dismissed that complaint for failure to comply with federal pleading rules. Covington has now filed an amended complaint, attempting to add two new defendants and new claims. As required by the Prison Litigation Reform Act ("PLRA"), the court must review the amended complaint and dismiss any portion that is (1) frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). After considering the amended pleading and the applicable law, the court will grant plaintiff leave to proceed with some, but not all of his new claims and will request an answer from two of the named defendants.

## ALLEGATIONS OF FACT

In addressing any *pro se* litigant's pleadings, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts.

Plaintiff Reo Covington is an inmate in Waupun Correctional Institution ("WCI"), where all of the defendants are employed. Defendant Sergeant Steiner is a correctional officer. Defendant Marie Svec is a social worker. Defendant Paul Ludvigson is a supervisory official. Defendant William J. Pollard is WCI's Warden. New to this suit are defendant N. Kamphuis, who works as the financial programs supervisor, and defendant C. Pembrose, who is employed as a nurse.

On September 25, 2012, Sergeant Steinert allegedly opened and read a piece of Covington's outgoing mail. Although the letter contained no contraband, Steinert did not reseal and place it back in the mailbox, but instead passed it to Marie Svec, who also read and then confiscated the letter.

Covington alleges that the letter was actually addressed to Covington from his mother. Covington allegedly marked the letter "RETURN TO SENDER" as a coded "distress signal," alerting his mother to call the institution and check on his safety. By confiscating the piece of mail and not returning it to his mother as he intended, Covington alleges that Steiner and Svec violated his rights under the First and Fourth Amendments.

Covington alleges further that Svec and Ludvigson retaliated against him for filing grievances regarding his confiscated letter. In particular, Svec allegedly told the Program Review Committee that Covington had "poor institutional adjustment" and recommended

that he be kept in a maximum security setting.[1] Based on that report, Ludvigson allegedly denied Covington an official job as a prison tutor in the Behavioral Health Unit in November 2012, although Ludvigson had previously encouraged Covington to apply for the job.

When Covington complained about the letter's confiscation and retaliation, Warden Pollard is alleged to have "turned a blind eye" and denied Covington's grievances. Covington also alleges that Kamphuis retaliated against him for filing this lawsuit, as evidenced by "numerous inconsistencies" with his inmate trust fund account, which he apparently claims were caused by Kamphuis's deliberate delays in depositing funds into his account, causing "shortfalls" or "overdrafts." As a result, Covington alleged missed canteen, leaving him unable to buy supplies that he needs.

Similarly, Covington alleges that defendant Pembrose retaliated against him after he filed a grievance against her for falsifying his medical records. In particular, Covington claims that Pembrose placed him on "room confinement," which denied him any movement. Covington also claims that Pembrose denied him proper treatment for an ankle injury in violation of the Eighth Amendment.

## OPINION

A complaint may be dismissed for failing to meet the minimal federal pleading requirements found in Rule 8 of the Federal Rules of Civil Procedure. Rule 8(a) requires a "'short and plain statement of the claim' sufficient to notify the defendants of the allegations against them and enable them to file an answer." *Marshall v. Knight*, 445 F.3d 965, 968 (7th

[1] In the state prison setting, a Program Review Committee makes decisions about an inmate's medical treatment, educational needs, and security classification. *See generally* Wis. Admin Code DOC § 302.15.

Cir. 2006). While it is not necessary for a plaintiff to plead specific facts, he must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are insufficient to establish a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007) (citing *Twombly*, 550 U.S. at 555) (observing that courts "are not bound to accept as true a legal conclusion couched as a factual allegation").

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) he was deprived of a right secured by the Constitution or laws of the United States; and (2) the deprivation was visited upon him by a person or persons acting under color of state law. *Buchanan-Moore v. County of Milwaukee*, 570 F.3d 824, 827 (2009) (citing *Kramer v. Village of North Fond du Lac*, 384 F.3d 856, 861 (7th Cir. 2004)). To establish individual liability under § 1983, a plaintiff must allege sufficient facts showing that the defendant personally caused or participated in the alleged constitutional deprivation. *See Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000); *Walker v. Taylorville Correctional Ctr.*, 129 F.3d 410, 413 (7th Cir. 1997) (noting that "personal involvement" is required to support a claim under § 1983). Here, Covington contends that the defendants violated his constitutional rights under the First, Fourth and Eighth Amendments, but has alleged sufficient facts to proceed only on certain claims against certain defendants.

## I. Opening, Reading and Keeping the Letter

By opening, reading and confiscating his outgoing mail, Covington contends that Steinert and Svec violated his rights under the First and Fourth Amendments. Since a

prisoner has no right to privacy with respect to his property, *see Hudson v. Palmer*, 468 U.S. 517, 530 (1984), Covington cannot state a claim under the Fourth Amendment.

Prisoners do, however, retain a First Amendment right to send and receive mail. *See Van den Bosch v. Raemisch*, 658 F.3d 778, 785 (7th Cir. 2011), *cert. denied sub nom. Jones-El v. Pollard*, 132 S. Ct. 1932 (2012); *Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir. 1999). Prison officials may impose restrictions on prisoner correspondence only if those restrictions are "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). Since Covington alleges that both Steinert and Svec interfered with a piece of outgoing mail, the court will allow him to proceed with a claim under the First Amendment.

**II. Retaliation**

Covington also filed grievances against Steinert and Svec for improperly confiscating his letter. In retaliation for these grievances, Covington contends that Svec labeled him a "high risk" inmate, which caused Ludvigson to deny him a job as a tutor in November 2012.

To state a claim for retaliation, a plaintiff must: (1) identify a constitutionally protected activity in which he was engaged; (2) identify one or more retaliatory actions taken by defendant that would likely deter a person of "ordinary firmness" from engaging in the protected activity in the future; and (3) allege sufficient facts that would make it plausible to infer that plaintiff's protected activity was a motivating factor in defendant's decision to take retaliatory action. *Bridges v. Gilbert*, 557 F.3d 541, 555-56 (7th Cir. 2009) (citing *Woodruff v. Mason*, 542 F.3d 545, 551 (7th Cir. 2008)).

On this record, the court will not allow Covington to proceed with a retaliation claim against Ludvigson. Regardless of what Svec wrote in her report, the mere fact that Covington

was not assigned a particular prison job, by itself, does not demonstrate that Ludvigson refused to assign him a job because of Svec's report. *Turley v. Rednour*, — F. App'x —, 2014 WL 465744 (7th Cir. Feb. 6, 2014). On the contrary, Covington concedes that he received a conduct report for violating unspecified prison rules on August 20, 2012, and was placed in segregation for at least a month as a result. Because it appears substantially more likely that Covington lost out on a prison job assignment due to his record of disciplinary misconduct, he fails to allege sufficient facts from which it may be reasonably found or even plausibly inferred that, but for Svec's report, he would have been given the job as a tutor.

While it seems almost equally unlikely that Covington could prevail against Svec, the court will allow him to proceed on the claim that Svec's assessment of Covington's adjustment and security classification would have been more favorable but for Covington's filing a grievance against Svec. Accordingly, the court will deny Covington leave to proceed with retaliation claims against Ludvigson, but allow him to proceed, at least past the screening stage, against Svec.

**III. Claims Against Kamphuis**

Covington next alleges that his inmate trust fund deposits were delayed, resulting in "inconsistencies" that temporarily curtailed his canteen purchases. Covington does not allege facts explaining how Kamphuis, as the financial programs supervisor at WCI, was personally involved in those deposits. Nor does he allege facts that his lawsuit was a cause of the alleged delay, especially since Kamphuis was not even originally named as a party to this lawsuit. Because his allegations are wholly conclusory and insufficient to articulate a plausible cause of action against Kamphuis, the court will deny Covington leave to proceed with that claim.

**IV. Claims Against Pollard**

Covington's claims against Warden Pollard fail as a matter of law as well, because supervisors may not be vicariously liable for the conduct of their subordinates. *See Vance v. Rumsfeld*, 701 F.3d 193, 203 (7th Cir. 2012) (en banc), *cert. denied*, 133 S. Ct. 2796 (2013). As the Supreme Court explained in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), "knowledge of subordinates' misconduct is not enough for liability. The supervisor must want the forbidden outcome to occur." *Id*. at 676-77. A warden does not otherwise incur liability under § 1983 for a subordinate's conduct just by participating in the grievance process. *See Greeno v. Daley*, 414 F.3d 645, 656-57 (7th Cir. 2005); *Steidl v. Gramley*, 151 F.3d 739, 741-42 (7th Cir. 1998); *Antonelli v. Sheahan*, 81 F.3d 1422, 1428 (7th Cir. 1996); *see also Burks v. Raemisch*, 555 F.3d 592, 595-96 (7th Cir. 2009) (rejecting the contention "that any public employee who knows (or should know) about a wrong must do something to fix it").

**V. Claims Against Pembrose**

Finally, the claims against Pembrose concern an alleged failure to provide adequate medical care in violation of the Eighth Amendment, which is wholly unrelated to the claims lodged against the other defendants. The Seventh Circuit has emphasized that "[u]nrelated claims against different defendants belong in different suits." *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). To that end, prisoners may not circumvent the fee-payment or three-strikes provisions of the Prison Litigation Reform Act by improperly joining claims in violation of the federal rules. *See id*.; *see also Turley v. Gaetz*, 625 F.3d 1005 (7th Cir. 2010) (demonstrating how the improper joinder of claims by prisoners can flout the three-strikes rule found in 28 U.S.C. § 1915(g)). Specifically, Fed. R. Civ. P. 18(a) provides that "[a]

party asserting a claim, counter-claim, cross-claim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party." Under this rule, "multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2." *George*, 507 F.3d at 607.

Likewise, Fed. R. Civ. P. 20 authorizes joinder of multiple defendants into one action only if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and any question of law or fact common to all defendants will arise in the action." The joinder rules apply equally to cases filed by prisoners and non-prisoners alike. *George*, 507 F.3d at 607; *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 683 (7th Cir. 2012) ("A litigant cannot throw all of his grievances, against dozens of different parties, into one stewpot."). For example, "a suit complaining that A defrauded the plaintiff, B defamed him, C punched him, D failed to pay a debt, and E infringed his copyright, all in different transactions" would be rejected if filed by a free person and should also be rejected if filed by a prisoner. *George*, 507 F.3d at 607.

Since Covington's attempt to join unrelated claims against Pembrose violates Rules 18 and 20, those claims will be dismissed without prejudice to refiling in a separate lawsuit.

ORDER

IT IS ORDERED that:

1. Plaintiff Reo L. Covington's request for leave to proceed is GRANTED as to his claim that: (a) defendants Steinert and Svec violated the First Amendment by opening, reading and confiscating a piece of his mail; and (b) Svec retaliated against Covington for filing a grievance related to tampering with his mail by giving him an unfavorable assessment of his institutional adjustment and security classification.

2. Plaintiff's claim against defendant Pembrose is DISMISSED without prejudice as improperly joined pursuant to Fed. R. Civ. P. 18 and 20.

3. All other claims are DISMISSED with prejudice for failure to state a claim upon which relief may be granted.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendants Steinert and Svec. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants Steinert and Svec.

5. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

6. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 4th day of November, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge